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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,474	08/25/2005	Rafi (Ralph) W. Sabel	CU-4176 RJS	3871
26530 7590 07/13/2007 LADAS & PARRY LLP 224 SOUTH MICHIGAN AVENUE SUITE 1600 CHICAGO, IL 60604			EXAMINER ROBINSON, GRETA LEE	
			ART UNIT 2168	PAPER NUMBER
			MAIL DATE 07/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/532,474

**Applicant(s)**

SABEL, RAFI (RALPH) W.

**Examiner**

Greta L. Robinson

**Art Unit**

2168

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-39 and 41-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-39 and 41-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 27-39 and 41-50 are pending in the present application.
2. A preliminary amendment was filed August 1, 2005. Claims 1-26 were cancelled; and new claims 27-50 were added. A second preliminary amendment was filed November 8, 2005. In that amendment claim 40 was cancelled, and claim 42 was amended.

### ***Priority***

3. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). The certified copy has been received.

### ***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted on September 06, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner, note attached copy of form PTO 1449.

### ***Drawings***

5. The drawings are objected to because descriptive textual labels are needed for reference characters 1, 3, 5, 7, 9 and 11 in Figure 1 for proper understanding of the figure at a glance. Also Figures 2 and 3 contain partial views. See 37 CFR 1.84(h).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

## **6. INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next

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Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Specification***

7. The disclosure is objected to because of the following informalities: Applicant has not properly defined the term "sniffing" see page 8 line 37.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 27-39 and 41-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claims are directed to an abstract idea and do not include a useful concrete tangible result. The preamble of the claims recite limitation directed to a method or apparatus for recording a transfer of a piece of data; however the body of each claim does not include an operational function directed to transfer of data. Also independent claims 1 and 39 omit, alternative procedures for if it is determined that a database does not contain a record. Claims 28-38 and 41-50 are rejected based on dependency.

***Claim Rejections - 35 USC § 112***

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 27-39 and 41-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 27, and 39, the following limitation is vague and/or not clear: "such that the amount includes a quantity of the piece of data" [see: claim 27 lines 7-8; and claim 39 lines 8-10]. Claims 28-38 and 41-50 are rejected based on dependency.

12. Claims 27-39 and 41-50 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: an operational procedure that transfers data.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

14. Claims 27, 38 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Welch Jr. et al. US Patent 6,240,452 B1.

Regarding claim 27, **Welch Jr. et al.** teaches a method of recording a transfer of a piece of data [note: “monitoring file transfers in a computer network” **abstract** ], the method comprising:

i. determining whether a database contains a record that has data which represents the piece of data [note: column 9 lines 5-15 determine whether the packet just received is part of a new logical connection”; **abstract**; also Figure 5 step 112 “IS THIS A FILE TRANSFER PACKET” ]; and

ii. upon determining that the database contains the record, setting one or more counters, which represent a total amount of the data in the record that has been transferred, such that the amount includes a quantity of the piece of data, to thereby record the transfer of the data [note: column 10 lines 1-15 "CME 83 complete its updating of connection record 93 in step 200 by updating appropriate byte count fields for the logical connection's connection record ... transmits data to peer A, then to peer total bytes received" ].

Regarding claim 38, computer hardware storing software, which when executed causes a computer to carry out the method as claimed in claim 27 [note: column 3 line 55 through column 4 line 11; Figures 1, 3 and 4].

The limitations of apparatus claim 39 parallels method claim 27; therefore it is rejected under the same rationale.

### ***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 28 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welch Jr. et al. US Patent 6,240,452 B1 in view of Shah Analysis of a Statistics Counter Architecture.



Welch Jr. et al. teaches the invention substantially as applied to independent claims 27 and 39; however regarding dependent claims 28 and 41 they do not explicitly teach setting means is further arranged to set a data field to correspond with an indicator that has a first byte count less than a second byte count of the piece of data. Shah provides for this element. Note Shah teaches a counter management algorithm in which values may be set see page 108, Figure 1 and abstract. It would have been obvious to one of ordinary skill at the time of the invention to have combined Shah with Welch Jr. et al. because a counter management algorithm would give more flexibility to the end-user and allow the user to define the parameters for tracking data.

### ***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mattis et al. US Patent 6,915,307 B

Nonaka et al. US Patent Application Publication No. 2004/0267671 a1

Narad et al. US Patent Application Publication No. 2003/0005103 A1

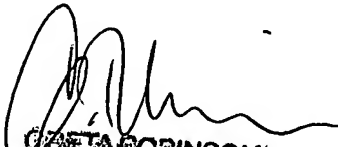
Aoki et al. US Patent 6,931,435 B2

Mattis et al. US Patent 6,453,319 B1

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greta L. Robinson whose telephone number is (571)272-4118. The examiner can normally be reached on M-F 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim T. Vo can be reached on (571)272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
**GRETA ROBINSON**  
**PRIMARY EXAMINER**

Greta Robinson  
Primary Examiner  
July 07, 2007